

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 28, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1003

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITY OF APPLETON,

Plaintiff-Respondent,

v.

JAMES STEFANIAK,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

MYSE, J. James Stefaniak, pro se, appeals a judgment of conviction for operating a motor vehicle while intoxicated contrary to APPLETON, WIS. ORDINANCE § 19-1(55), which is in conformity with § 346.63(1)(a), STATS. Stefaniak contends that there was insufficient evidence to sustain his conviction, that the officer lacked probable cause to arrest him, and that his attorney was ineffective in his representation. Because this court finds no merit to Stefaniak's contentions, the judgment of conviction is affirmed.

A city of Appleton police officer observed Stefaniak enter the intersection on a red light, causing other vehicles to beep their horns and attempt to avoid a collision. The officer testified that when he stopped

Stefaniak, he noticed an odor of alcohol and slurred speech. The officer further testified that Stefaniak's eyes were dilated and that Stefaniak told him that he had a couple of beers. The officer then had Stefaniak perform several field sobriety tests and concluded that he failed to perform them satisfactorily. Stefaniak refused to consent to a Breathalyzer or blood test and was arrested for operating under the influence of an intoxicant. Stefaniak was convicted of the offense after a jury trial and now appeals.

Stefaniak first alleges that there is insufficient evidence to sustain the judgment of conviction. The test on review of a challenge to the sufficiency of the evidence is whether the trier of fact, acting reasonably, could be convinced of the defendant's guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis.2d 493, 503-04, 451 N.W.2d 752, 756 (1990). The jury, not this court, determines the credibility of witnesses and the weight of the evidence. *Id.* at 504, 451 N.W.2d at 756. If more than one reasonable inference can be drawn from the evidence, the one which supports the finding of the jury must be adopted by this court. *Id.*

According to the officer, Stefaniak had an odor of alcohol about him, slurred his speech, admitted to drinking, and failed to perform the field sobriety tests properly. Stefaniak raises a series of explanations for each of the observations made by the officer and denies certain parts of the officer's testimony. However, the jury resolved all contested facts against Stefaniak and accepted the officer's testimony as to his observations, the performance of the field sobriety tests and the method of Stefaniak's operation of the vehicle. This court concludes that the jury, acting reasonably, could believe the officer's testimony and the evidence is sufficient to support the finding of guilt.

Stefaniak next suggests that the officer had no probable cause for his arrest. This court does not agree. Probable cause to arrest is that quantum of evidence which would lead a reasonable police officer to believe the defendant probably committed an offense. *State v. Paszek*, 50 Wis.2d 619, 624, 184 N.W.2d 836, 839 (1971). The factors identified by the officer at the time of the arrest, though contested by Stefaniak, are sufficient to justify the officer's investigation and support a basis for the officer's arrest. This court concludes the evidence is sufficient to constitute probable cause necessary to support Stefaniak's arrest.

Stefaniak next alleges that his defense lawyer was ineffective for failing to effectively cross-examine witnesses and for not introducing other explanations for the officer's observations. First time drunk driving offenses are civil, non-criminal charges. *County of Racine v. Smith*, 122 Wis.2d 431, 435, 362 N.W.2d 439, 441 (Ct. App. 1984). Because this is a civil case, Stefaniak may not raise ineffective assistance of counsel as a constitutional challenge to his conviction. See *Big Bend v. Anderson*, 103 Wis.2d 403, 405-06, 308 N.W.2d 887, 889 (Ct. App. 1981). This case was prosecuted by the City of Appleton as a non-criminal case and, accordingly, ineffective assistance of counsel challenges may not be made against the judgment of conviction.

Stefaniak's pro se brief also suggests that the police department enforcement policies violate his substantive due process and equal protection rights. However, these arguments are not sufficiently developed and therefore will not be addressed. See *W.H. Pugh Coal Co. v. State*, 157 Wis.2d 620, 634, 460 N.W.2d 787, 792 (Ct. App. 1990). Further, because the appeal of the order determining that Stefaniak unlawfully refused to submit to a chemical test was dismissed as untimely, this court will not decide any issues regarding that order.

This court concludes that the evidence is sufficient to support the finding of guilt, that the officer had probable cause for the arrest and that counsel's performance does not constitute a basis to challenge the judgment of conviction. Therefore, the judgment is affirmed.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.